IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 134 of 2001.

Reserved on: 27.04.2007.

Decided on: 25.05 2007.

Radhi Devi & Others.

… … … Petitioners.

Versus

State of H.P. and others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner:	**Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.**
For Respondents No.1 to 3:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**

Rajiv Sharma, Judge:

The brief facts necessary for adjudication of this petition are that the Principal Chief Conservator of Forest had sent letter dated 11.4.1997 to the Chief Conservator of Forests, Rampur conveying him the approval of the Government for including Hattu beat in Narkanda Block of Kotgarh Range of Kotgarh Forest Division in the

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Ten Years Programme of Rampur Circle during 1997-98. The Chief Conservator, Rampur was directed to take further necessary action in sequel to letter dated 14.2.1997. The copy of this letter is placed on record vide Annexure R-1/A. In sequel to communication, dated 11.4.1997, the petitioners had submitted applications on the prescribed Form-II seeking permission to fell trees from their land to the Divisional Manager, Forest Working Division, Rampur Bushahr. The Divisional Manager, Forest Working Division, Rampur Bushahr on 18th March, 1998 had sent the applications to the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh requesting him to process their cases for felling/demarcation permission strictly in accordance with Himachal Pradesh Forest Produce (Regulation & Trade) Act, 1982. The Divisional Forest Officer on 3rd April, 1998 informed the Divisional Manager, Forest Working Division, Rampur that he had submitted the private sale cases to the office at the fag end of the prescribed year of the felling programme 1997-98 which was not proper. The Divisional Forest Officer, Kotgarh Forest Division, Kotgarh has further informed the Divisional Manager, Forest Working Division, Rampur that in fact the applications of the petitioners should have been returned instead of sending the same to his office. The gist of letter dated 3.4.1998 was that the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh was of the view that the cases of the petitioners could not be processed since demarcation could not be completed within few days. Consequently, the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh had returned the

documents to the Divisional Manager, Forest Working Division, Rampur Bushahr, H.P.

The petitioners feeling aggrieved by the inaction on the part of the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh made a representation to the Secretary (Forest) as well as to the Chief Conservator of Forests, Himachal Pradesh on 6.5.1998 bringing to his notice that they were not aware of the communication dated 11.4.1997 and immediately when they came to know about the issuance of the letter, they have forwarded their applications to the Divisional Forest Manager, Forest Working Division, Rampur Bushahr. The petitioners have specifically prayed in their representation that their case for deviation be also considered. Thereafter the petitioners sent a legal notice through their Advocate, Mr. G.D. Verma reiterating that their case was required to be processed by the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh and if there was delay, the case of the petitioners was to be considered for deviation. It will be apt to note at this stage that the State has framed guidelines for allowing deviation and copy of the same alongwith Annexure R-1/B has been placed on record. The relevant para 3 of the guidelines for deviation is reproduced below:-

> **"The Govt. may consider deviation for the felling of trees form the 10 years programme only in exceptional cases keeping in view the full justification of the case on receipt of recommendations of the Principal Chief Conservator of Forest as under:-**

a) **Deviation for arrears of felling will be allowed only upto maximum of two years from the prescribed year of felling (i.e. deviation can be considered for the cases pending from 1986-87 onwards.) and not in respect of old cases). Each case falling within this limit will be processed on merit keeping in view the reasons for not seeking/ getting the permission during the prescribed year of felling.**

b) **In no case fellings in advance of the prescribed years felling programme will be processed."**

Mr. G.D. Verma has strenuously argued that letter dated 11.4.1997 was not widely circulated as required, bringing to the notice of the estate holders for the grant of permission for felling of trees from private land under the ten years felling programme in Hattu beat in Narkanda Block of Kotgarh Range of Kotgarh Forest Division during 1997-98. Mr. Verma further submitted that the application forwarded by the Divisional Manager vide Annexure P-, dated 18.3.1998 was required to be processed by the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh in accordance with law instead to returning the same to the Divisional Manager, Forest Working Division, Rampur Bushahr. The alternative prayer of Mr. Verma is that if the authorities were under the impression that there was delay, in that eventuality, the petitioners' application was to be considered under the guidelines providing for deviation.

The learned Advocate General has supported the action of the respondents by submitting that the period for considering the

case of the petitioners was very limited and no case was made out for deviation by the petitioners.

I have heard the parties and perused the record.

The State has granted permission to include Hattu beat in Narkanda Block of Kotgarh Range of Kotgarh Forest Division in the ten years programme vide circular during the year 1997-98 as per letter dated 11.4.1997. This letter was required to be circulated in the entire Narkanda Block of Kotgarh Range of Kotgarh Forest Division to bring to the notice of the estate holders that they should forward their applications for consideration through proper channel. The respondent-State has not placed any material on record that this letter dated 11.4.1997 was ever circulated by any mode, i.e. by pasting the copy of the same at patwar-ghar, by publication in any of the vernacular news paper etc.

The petitioners being farmers/orchardists had submitted their applications to the Divisional Manager, Forest Working Division, Rampur Bushahr in the prescribed form. It was incumbent upon the Divisional Forest Officer, Kotgarh Forest Division, Kotgarh to process the applications of the petitioners and after getting the areas demarcated to accord necessary sanction in favour of the petitioners. The Divisional Forest Officer has failed to discharge his duties by remitting back the documents to the Divisional Manager, Forest Working Division, Rampur Bushahr without taking any action on them. There was sufficient time with the Divisional Forest Officer to get the area demarcated after the receipt of the applications and to accord necessary permission for felling to the

petitioners. The Divisional Forest Officer, Kotgarh Forest Division could not be oblivious to the fact that the felling permission is accorded after ten years and if their case was not considered for 1997-98, then their next turn will come after ten years.

The case can be viewed from another angle also. The State has framed guidelines for allowing deviation as referred to above. It is evident from para 3 quoted above that the Government may consider deviation for the felling of trees from the ten years felling programme only in exceptional cases keeping in view the full justification of the case on receipt of recommendations of the Principal Chief Conservator of Forest. The documents of the petitioners had reached the office of Divisional Forest Officer, Kotgarh Forest Division, Kotgarh and if he was of the view that there is delay, in that eventuality, he was required to send the case to the Principal Conservator of Forests for deviation. The Divisional Forest Officer, Kotgarh instead of doing the needful has sent the documents back to the Divisional Manager, Forest Working Division, Rampur Bushahr. In the representation made by the petitioners on 6.5.1998 there was specific mention that their case for deviation be also considered. This was also reiterated by way of legal notice sent by Mr. G.D. Verma on behalf of his clients to the department. The State has taken a very hyper-technical stand in the reply of not considering the case of the petitioners for deviation. The stand of the respondents with regard to deviation as mentioned in para 2 of preliminary submission of the reply is reproduced as under:-

> **"That it is submitted that the Divisional Manager, HPSFC, Rampur, petitioners/ land owners did not apply to the functionaries of the replying state for consideration of deviation but choosed to send legal notice through their counsel Sh. G.D. Verma Advocate vide registered post letter No. nil dated 15.8.1999. It is after lapse of one and half years period."**

The petitioners have made representation as is evident from Annexure P-3 on 6.5.1998 to the Divisional Forest Officer, Kotgarh/Divisional Manager, Forest Working Division, Rampur and the legal notice was sent on 15.8.1999. It was incumbent upon the respondents to consider the case of the petitioners for deviation on the basis of representation dated 6.5.1998.

The upshot of the above discussion is that the Divisional Forest Officer, Kotgarh has failed to discharge his duties in accordance with law. The Divisional Forest Officer, Kotgarh was required to process the case of the petitioners for according felling permission and if was of the view that there was delay, in that eventuality, he was required to send the case to the Principal Conservator of Forest for seeking permission of the State. The reason mentioned by the Divisional Forest Officer, Kotgarh that there was shortage of time, is un-tenable. The respondent-State had the necessary wherewithal and infrastructure to get the area demarcated within a few days. If for any reason, the same was not possible, then the case of the petitioners was necessarily required to be considered for deviation as per the guidelines. The failure of the respondents to discharge their duties has caused immense

hardship to the petitioners. The petitioners have to wait for another ten years if felling permission is not granted immediately. The petitioners cannot in any manner be blamed for the delay in view of the discussion narrated above.

Accordingly, this petition is allowed. Annexure P-2 dated 3.4.1998 is quashed and set aside. The respondents are directed to re-consider the case of the petitioners for grant of felling permission and if necessary by allowing deviation as a special case in view of the peculiar facts and circumstances of the case within four weeks.

Before parting with the judgment, it is made clear that as and when the permission is accorded by the State for felling under ten years felling programme, the same is to be circulated widely to enable the farmers/orchardists to take advantage of the same.

No order as to costs.

(Rajiv Sharma)
Judge

May 25, 2007
(sck).